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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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11 ROQUE NUNEZ MUNGUIA,
12 Plaintiff,
13 v.
14 NISSAN NORTH AMERICA, INC.
15 Defendant.

16 Case No. 1:23-cv-01668-NODJ-CDB
17 **SCHEDULING ORDER** (Fed. R. Civ. P. 16)
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19 Discovery Deadlines:

- Rule 26 Disclosures: March 1, 2024
- Amended Pleadings: April 26, 2024
- Expert Disclosures: September 12, 2024
- Rebuttal Disclosures: October 3, 2024
- Fact Discovery Cut-Off: August 28, 2024
- Expert Discovery Cut-Off: November 5, 2024
- Mid-Discovery Status Conference: July 10, 2024, at 9:00 a.m., in Bakersfield Federal Courthouse 510 19th Street, Bakersfield, CA 93301

20 Non-Dispositive Motion Deadlines:

- Filing: November 15, 2024
- Hearing: December 20, 2024, at 10:30 a.m., Bakersfield Federal Courthouse

21 Dispositive Motion Deadlines:

- Filing: January 10, 2025
- Hearing: February 14, 2025
1:30 p.m., in Robert E. Coyle Federal Courthouse, Fresno, Courtroom 1, 8th Floor

22 Pre-Trial Conference: March 24, 2025, at 1:30
23 p.m., in Fresno Federal Courthouse
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25 Trial: May 20, 2025, at 8:30 a.m., in Fresno
26 Federal Courthouse
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1 Nissan North America, Inc. (“Defendant”) removed this action from state court on
2 November 29, 2023. (Doc. 1). In the operative complaint, Plaintiff Roque Nunez Munguia
3 (“Plaintiff”) asserts the following claims against “Defendant”: (1) violation of the Song-Beverly
4 Consumer Warranty Act Breach of Express Warranty, (2) violation of the Song-Beverly Consumer
5 Warranty Act Breach of Implied Warranty, and (3) violation of Business and Professions Code §
6 17200. (Doc. 1-1). The parties convened via Zoom videoconference for a scheduling conference
7 before Magistrate Judge Christopher D. Baker on February 26, 2024. Joseph Dale Steward, III
8 appeared on behalf of Plaintiff and Jason Matthew Richardson appeared on behalf of Defendant.

9 **I. Magistrate Judge Consent:**

10 Currently there is no joint consent to Magistrate Judge jurisdiction.

11 **Notice of Congested Docket and Court Policy of Trailing**

12 Due to the District Judges’ heavy caseload, the adopted policy of the Fresno Division of the
13 Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set before a
14 District Judge, the parties will trail indefinitely behind any higher priority criminal or older civil case
15 set on the same date until a courtroom becomes available. The trial date will not be reset.

16 Further, as of the date of entry of this scheduling order, this matter is assigned to “No District
17 Court Judge (NODJ)” until a new district judge is appointed.¹

18 The Magistrate Judges’ availability is far more realistic and accommodating to parties than that
19 of the District Judges who carry the heaviest caseloads in the nation and who must prioritize criminal
20 and older civil cases over more recently filed civil cases. A Magistrate Judge may conduct trials,
21 including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73,
22 and Local Rule 305. Any appeal from a judgment entered by a Magistrate Judge is taken directly to the
23 United States Court of Appeal for the Ninth Circuit.

24 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
25 conduct all further proceedings, including trial, and to file a consent/decline form (provided by the
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¹ Contact information for the NODJ chambers and courtroom deputy can be found at
28 <https://www.caed.uscourts.gov/caednew/index.cfm/judges/all-judges/united-states-district-judge-nodj/>. Proposed orders for a District Judge in this case should be sent to nodjorders@caed.uscourts.gov.

1 Court at the inception of this case) indicating whether they will consent to the jurisdiction of the
2 Magistrate Judge.

3 **II. Pleading Amendment**

4 Any motions to amend the pleadings or substitute “Doe” defendants must be filed by April 26,
5 2024. Filing a motion and/or stipulation requesting leave to amend the pleadings does not reflect on the
6 propriety of the amendment or imply good cause to modify the existing schedule, if necessary. All
7 proposed amendments must (A) be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the
8 amendment requires any modification to the existing schedule, *see Johnson v. Mammoth Recreations,*
9 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an
10 amendment is not (1) prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in
11 bad faith, or (4) futile, *see Foman v. Davis*, 371 U.S. 178, 182 (1962).

12 **III. Discovery Plan and Cut-Off Date**

13 The parties shall exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1) by no later
14 than **March 1, 2024**.

15 The parties are ordered to complete all discovery pertaining to non-experts on or before **August**
16 **28, 2024**, and all discovery pertaining to experts on or before **November 5, 2024**.

17 The parties are directed to disclose all expert witnesses², in writing, on or before **September 12,**
18 **2024**, and to disclose all rebuttal experts on or before **October 3, 2024**. The written designation of
19 retained and non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and
20 (C) and shall include all information required thereunder. Failure to designate experts in compliance
21 with this order may result in the Court excluding the testimony or other evidence offered through such
22 experts that are not disclosed pursuant to this order.

23 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
24 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions

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² In the event an expert will offer opinions related to an independent medical or mental health evaluation, the examination SHALL occur sufficiently in advance of the disclosure deadline so the expert's report fully details the expert's opinions in this regard.

1 included in the designation. Failure to comply will result in the imposition of sanctions, which may
2 include striking the expert designation and preclusion of expert testimony.

3 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
4 disclosures and responses to discovery requests will be strictly enforced.

5 A mid-discovery status conference is scheduled for **July 10, 2024**, at 9:00 a.m. before Judge
6 Baker. Counsel SHALL file a joint mid-discovery status conference report no later than one week
7 before the conference. Counsel also SHALL lodge the joint status report via e-mail to
8 CDBorders@caed.uscourts.gov. The joint status report SHALL outline the discovery counsel have
9 completed and that which needs to be completed as well as any impediments to completing the
10 discovery within the deadlines set forth in this order. Counsel SHALL discuss settlement and certify in
11 the joint status report (1) that they have met/conferred regarding settlement, and (2) proposed dates for
12 convening a settlement conference before a U.S. Magistrate Judge.

13 **IV. Pre-Trial Motion Schedule**

14 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
15 than **November 15, 2024**³ and heard on or before **December 20, 2024**, at 10:30 a.m. Discovery
16 motions shall be set before Judge Baker. For these hearings and at the direction of the Courtroom
17 Deputy Clerk, the Court may direct counsel to appear remotely (via Zoom). For hearings noticed to
18 occur in-person, the Court may permit counsel to appear remotely (via Zoom) provided the Courtroom
19 Deputy Clerk receives a written notice of the request to appear remotely no later than five court days
20 before the noticed hearing date.

21 No motion to amend or stipulation to amend the case schedule will be entertained unless it is
22 filed at least one week before the first deadline the parties wish to extend. Likewise, no written
23 discovery motions shall be filed without the prior approval Judge Baker. A party with a discovery
24 dispute must first confer with the opposing party in a good faith effort to resolve by agreement the
25 issues in dispute. If that good faith effort is unsuccessful, the moving party promptly shall seek a

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³ Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time of discovery of the dispute, but in no event later than 30 days after the expiration of the non-expert discovery deadline.

1 hearing with all involved parties and Judge Baker. To schedule this hearing, the parties are ordered to
2 contact the Courtroom Deputy Clerk, Susan Hall, at (661) 326-6620 or via email at
3 SHall@caed.uscourts.gov. At least three days before the conference, counsel SHALL file informal
4 letter briefs detailing their positions. The briefs may not exceed 7 pages, excluding exhibits. Counsel
5 must comply with Local Rule 251 with respect to discovery disputes or the motion will be denied
6 without prejudice and dropped from the Court's calendar.

7 All dispositive pre-trial motions shall be filed no later than **January 10, 2025**, and heard no
8 later than **February 14, 2025**, before the assigned United States District Judge at 1:30 p.m. In
9 scheduling such motions, counsel shall comply with Fed. R. Civ. P. 56 and Local Rules 230 and 260.

10 **V. Motions for Summary Judgment or Summary Adjudication**

11 At least 21 days before filing a motion for summary judgment or motion for summary
12 adjudication, the parties are ORDERED to meet, in person or by telephone, to confer about the issues to
13 be raised in the motion.

14 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
15 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
16 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
17 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
18 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

19 The moving party SHALL initiate the meeting and SHALL provide a complete, proposed
20 statement of undisputed facts at least five days before the conference. The finalized joint statement of
21 undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be
22 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
23 statement of undisputed facts.

24 In the notice of motion, the moving party SHALL certify that the parties have met and
25 conferred as ordered above or set forth a statement of good cause for the failure to meet and confer.
26 Failure to comply may result in the motion being stricken.

27 **VI. Pre-Trial Conference Date**

28 **March 24, 2025**, at 1:30 p.m. before the assigned United States District Judge. The parties are

1 ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The parties are further
2 directed to submit a digital copy of their pretrial statement in Word format, to the assigned United
3 States District Judge.

4 Counsel's attention is directed to Rules 281 and 282 of the Local Rules of Practice for the
5 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
6 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
7 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
8 Court to explain the nature of the case to the jury during voir dire.

9 **VII. Trial Date**

10 **May 20, 2025**, at 8:30 a.m., before the assigned United States District Judge.

- 11 A. This is a jury trial.
12 B. Counsel's Estimate of Trial Time: 5-7 days
13 C. Counsel's attention is directed to Local Rules of Practice for the Eastern District of
14 California, Rule 285.

15 **VIII. Request for Bifurcation, Appointment of Special Master, or other**

16 **Techniques to Shorten Trial**

17 Not applicable at this time.

18 **IX. Related Matters Pending**

19 There are no pending related matters.

20 **X. Compliance with Federal Procedure**

21 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
22 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
23 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently
24 handle its increasing case load and sanctions will be imposed for failure to follow both the Federal
25 Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

26 **XI. Effect of this Order**

27 The foregoing order represents the best estimate of the court and counsel as to the agenda most
28 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the

1 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered
2 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by
3 subsequent status conference.

4 **The dates set in this Order are considered to be firm and will not be modified absent a**
5 **showing of good cause even if the request to modify is made by stipulation. Stipulations**
6 **extending the deadlines contained herein will not be considered unless they are accompanied by**
7 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**
8 **for granting the relief requested.**

9 IT IS SO ORDERED.

10 Dated: February 26, 2024


11 UNITED STATES MAGISTRATE JUDGE

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